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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Global Access Developers LLC,  
Plaintiff,  
v.  
Cpapnea Medical Supply, et al.,  
Defendants.

No. CV-22-01966-PHX-SMB

## ORDER

Cpapnea Medical Supply, et al.,  
Defendants.

Before the Court is Defendants' Motion to Transfer to the Eastern District of Washington (Doc. 8) and the parties' Stipulated Motion to Transfer to the Western District of Washington, Tacoma Division (Doc. 10). After considering the parties' motions and the relevant caselaw, the Court denies Defendants' Motion to Transfer as moot, and grants the parties' Stipulated Motion to Transfer for the following reasons.

Plaintiff, a resident of Clark County, Washington, filed a Complaint in Washington’s Clark County Superior Court. (Doc. 1 at 2–3 ¶¶ 1, 6.) Defendants, Arizona residents, filed a Notice of Removal with the Court based on diversity jurisdiction. (*Id.* at 2 ¶¶ 2, 4.) Shortly after, Defendants filed a motion to transfer the case to the Eastern District of Washington, noting that “Defendants’ filing in the District of Arizona was in error, as 28 U.S.C. § 1441(a) only permits removal ‘to the district court of the United States for the district and division embracing the place where such action is pending.’” (Doc. 8 at 2.) Thereafter, the parties filed a Stipulated Motion to Transfer the case to the Western District of Washington, Tacoma Division. (*See* Doc. 10). The

1 parties have stipulated that: “(1) Defendants shall not move to transfer venue to any other  
2 state or federal court, and (2) Plaintiff shall not move for remand to the Clark County,  
3 Washington Superior Court.” (*Id.*)

4 For a defendant to remove a case from state court to federal court, 28 U.S.C.  
5 § 1441(a) must be satisfied. It reads:

6 Except as otherwise expressly provided by Act of Congress, any civil  
7 action brought in a State court of which the district court of the United  
8 States have original jurisdiction, may be removed by the defendant or the  
defendants, **to the district court of the United States for the district and**  
**division embracing the place where such action is pending.**

9 (emphasis added). However, district courts within the Ninth Circuit have treated cases  
10 removed to the wrong district as a procedural defect that should be resolved by  
11 transferring rather than remanding. *See Gomes v. Silver State Mortg.*, No. C 09-2340 RS,  
12 2009 WL 10674100, at \*1 (N.D. Cal. July 28, 2009) (noting that although the Ninth  
13 Circuit has yet to speak on this issue, this remedy has been adopted by the Eleventh and  
14 Fifth Circuit); *see also Setterland v. Patel*, No. C 05-04501 WHA, 2006 WL 335285, at  
15 \*1 (N.D. Cal. Feb. 14, 2006) (adopting this approach from the Eleventh Circuit).

16 The Court agrees that because Plaintiff filed the Complaint in a Washington state  
17 court, pursuant to 28 U.S.C. § 1441(a), Defendants erroneously removed the case to the  
18 District of Arizona. Nevertheless, following district courts within the Ninth Circuit, the  
19 Court finds this procedural defect can be cured by granting the parties’ Stipulated Motion  
20 to Transfer. Defendants’ Motion Transfer is thus rendered moot.

21 Accordingly,

22 **IT IS ORDERED** that the parties’ Stipulated Motion to Transfer is granted.  
23 (Doc. 10.)

24 **IT IS FURTHER ORDERED** transferring this case to the Western District of  
25 Washington, Tacoma Division.

26 **IT IS FURTHER ORDERED** that Defendants’ Motion to Transfer is denied as  
27 moot. (Doc. 8.)

28 ...

**IT IS FURTHER ORDERED** instructing the Clerk of the Court to terminate this case.

Dated this 9th day of December, 2022.

Honorable Susan M. Brnovich  
United States District Judge